

**Amendments to Division III of the Iowa Court Rules
December 2012
Summary of Amendments**

Rule 31.1(1)

The changes to rule 31.1(1)(e) clarify that board members and temporary examiners are entitled to per diem for grading the examination and for performing character and fitness investigations. This reflects current practice for normal board duties.

Rule 31.1(2)

The changes to rule 31.1(2)(c) clarify that applicants must also pass the MPRE before the board can recommend them to the court for admission to the practice of law. The addition of rule 31.1(2)(d) provides that successful bar examination applicants must be sworn in within one year or their passing score will be null and void. The purpose of the rule is to ensure the court does not have to monitor indefinitely those applicants who take the Iowa bar then neglect to get admitted. A similar provision is already present for admission on motion applicants in rule 31.13(2)(d).

Rule 31.2(2)

The changes in rule 31.2(2) clarify the late fee dates for law student registrations and indicate that the board may determine an applicant must complete the character and fitness process before being allowed to sit for the examination. The latter change is necessary to prevent students with substantial character and fitness problems from gaining an advantage by waiting to file their law student registration until the last possible moment.

Rule 31.2(4)

The changes in rule 31.2(4) provide guidance on acceptable content for a reference letter for law students. This topic yields many questions and too often reference letters have no discernible content.

Rule 31.3(2)

The changes in rule 31.3(2) explain the system for requesting permission to post a late MPRE score. This change mirrors the existing, unwritten system.

Rule 31.5(2)

The changes clarify that an unsuccessful applicant has until the later of the ordinary bar application deadline or 30 days after the scores are posted in

the office of professional regulation to file a new application. For some examinations, an unsuccessful applicant would have to file earlier than other applicants, which is not the intent behind the rule.

Rule 31.9(1)(b)

The change clarifies that the board, in making its character and fitness assessment, can consider the applicant's candor in preparing the application and interacting with the board and its staff. This change reflects current unwritten policy.

Rule 31.12

The change to rule 31.12(8) makes clear that Iowa lawyers who have placed their Iowa license in inactive status under the provisions of chapter 41 pertaining to continuing legal education and chapter 39 pertaining to client security may not use the admission on motion rules to avoid the reinstatement provisions of chapters 39 and 42. In conjunction with this amendment, chapter 42 is amended to place a cap on the continuing legal education requirements associated with reinstatement for those lawyers who have been inactive for several years. The change to rule 31.12(8) makes clear that an applicant who has been disbarred and not reinstated or whose license is currently suspended in any other jurisdiction is not eligible for admission on motion.

Rule 31.13

Non-substantive amendments to rule 31.13 conform the rule to other provisions and current practice.

Rule 34.4

The change in rule 34.4(3) eliminates the requirement that files of the Attorney Disciplinary Board be retained permanently. More specific instructions regarding file retention, including destruction authority in defined circumstances, are provided in rule 35.29.

Rule 35.14

The new subparagraph of rule 35.14 requires that applicants for reinstatement from suspension submit satisfactory proof that the Client Security Trust Fund has been repaid in full, or that the Client Security Commission has approved a repayment plan, for all client security claim payments paid from the Client Security Trust Fund under rule 39.9 based on conduct of the applicant.

Rule 35.29

The new rule 35.29 provides specific retention and destruction standards for files and records of the Attorney Disciplinary Board. The board will be required to maintain a permanent summary of all complaint matters, containing the name of the complainant and respondent-attorney, the disposition, and the respective dates the matter was opened and closed. Files and records relating to complaints dismissed by the assistant director pursuant to rule 34.4(1) may be destroyed three years from the date of the last action on the file. Files and records relating to all other complaints dismissed by the board may be destroyed five years from the date of the last action on the file. All other files and records relating to allegations of misconduct by an attorney may be destroyed after the death of the respondent attorney. The board also will be permitted to immediately destroy any paper record if it has been transferred to computer storage.

Rule 36.15

The new 60 day deadline for Grievance Commission panel decisions was included in the revised and renumbered rule 35.10, but not in rule 36.15, which also addresses the deadline for panel decisions. The revision to rule 36.15 makes the appropriate conforming correction.

Rule 36.19

The new rule 36.19 provides specific retention and destruction standards for files and records of the Grievance Commission. The commission will be required to maintain a permanent summary of all docketed grievance matters containing the name of the respondent attorney, the disposition, and the respective dates the matter was opened and closed. The commission also will be required to permanently maintain the complaint, answer, amendments to the complaint and answer, and the commission recommendation for discipline or other disposition for each docketed grievance case. All other commission files and records relating to a docketed grievance complaint may be destroyed after the death of the respondent attorney. The commission also will be permitted to immediately destroy any paper record if it has been transferred to computer storage.

Rule 37.1

The current size of the Commission on the Unauthorized Practice of Law has proven too unwieldy to operate effectively. The normal case load generally requires administration of three to four substantive complaints each quarter. In addition, there is greater staff involvement in case administration since the office of professional regulation undertook support of the commission. The result is that many current commission members no longer personally handle

complaints and do not participate meaningfully in meetings and investigations, making it difficult to achieve quorum and initiate action. The change adopts the operational model of other commissions such as the Client Security Commission and the Lawyer Trust Account Commission. These commissions have smaller membership that facilitates engagement, maintenance of quorum requirements, and more effective processing of complaints. The change will reduce the commission size to seven lawyers and two lay members. To allow transition in current commission membership, this change will not be effective until July 1, 2013.

Rule 38.4

The reduction in the size of the commission necessitates amendment of provisions pertaining to minimum voting requirements for commission action. The amendment to rule 38.4 preserves the current provision for action based on concurrence of a majority of the members in attendance, but requires a minimum of four members to approve commencement of injunction actions in district court. To allow transition in current commission membership, this change will not be effective until July 1, 2013.

Rule 39.9

The changes in rule 39.9 will extend coverage by the Client Security Trust Fund to claims resulting from actions of an attorney who establishes an office or other systematic and continuous presence in Iowa for the practice of law under rule of professional conduct 32:5.5(d)(2) and pays the annual fee and assessment due under rules 39.5 and 39.6. A related change in rule 39.16 requires such persons to file an annual client security report and pay the annual fee for support of the disciplinary system and normal assessments for the Client Security Trust Fund.

Rule 39.16

Iowa Rule of Professional Conduct 32:5.5 allows lawyers who are admitted in some other state to practice before federal agencies in Iowa without being admitted here. The new rule 39.16 provides that an attorney who establishes an office or other systematic and continuous presence in Iowa for the practice of law under the provisions of rule of professional conduct 32:5.5(d)(2) shall file the annual client security statement required by rule 39.8(1) and annual client security questionnaire required by rule 39.11, pay the annual fee and assessment due under rules 39.5 and 39.6, comply with all provisions of chapter 45 pertaining to trust accounts, cooperate with investigations and audits under rule 39.10, and be subject to the provisions of rule 39.12.

Rule 41.9

The report contemplated by rule 41.9 no longer is required due to recent changes in the rules governing lawyer advertising.

Rule 42.7

Some lawyers who had been inactive longer than 6 years have found the current reinstatement requirement of 15 CLE hours per year of inactive status too onerous and expensive, and instead have simply applied for admission on motion if they meet those requirements. Rule 42.7 is amended to limit the continuing legal education required for reinstatement from inactive status to 100 hours of regular CLE, including 10 hours of ethics. This amount is comparable to the education time associated with attendance of the current bar review course.

Rule 44.1

The change in rule 44.1 updates the contact information for the Lawyer Trust Account Commission to include the correct telephone number, email address, and uniform resource locator (URL).

Rule 44.2

The change in rule 44.2 updates language describing the intent of the Interest on Lawyers' Trust Account program.

Rule 44.3

The change to rule 44.3 incorporates the general grant priorities developed by the Lawyer Trust Account Commission. The commission has prioritized applications based on the general return on investment and an overall emphasis on legal services for low income persons.

Rules 44.8, 44.9 and 44.15

The changes update the address information for the commission to include its electronic mail address, reduce the number of paper copies required for grant applications to one, and require parallel submission of grant applications by electronic mail.

Rule 45.11

The new rule 45.11 facilitates planning by sole practitioners for administration of their law practice in the event of their death or disability. Planning for death or disability is required on the part of most sole

practitioners, based on comment 5 to Iowa Rule of Professional Conduct 32:1.3. The new rule allows a sole practitioner to designate another Iowa lawyer as a stand-by signatory on his or her trust account, with that authority to become effective upon the occurrence of an event or events described in the instrument, which might include death, disappearance, abandonment of law practice, temporary or permanent incapacity, suspension, or disbarment.

Rule 49.3

The change in rule 49.3 provides authority for reallocation of fees collected by the office of professional regulation between commissions when needs and fund balances warrant, with court approval. The rule chapters listed in the amended rule 49.3 (39, 41, and 42) encompass fees collected as part of the CLE, client security, and disciplinary system functions. The current transitional provisions of rule 49.3 no longer are needed and are stricken.